

**UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MICHIGAN**

JANE DOE,

Plaintiff,

CASE #1:10-cv-895

v.

HON. ROBERT J. JONKER

CARL J. GALBRIESE, In His Personal
And Official Capacity; and CITY OF
HOLLAND,

Defendants.

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Bolhouse, Vander Hulst, Risko, Baar & Lefere
Co-Counsel for Plaintiff
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ANSWER TO PLAINTIFF'S COMPLAINT

NOW COMES Defendant, CITY OF HOLLAND, by and through its attorneys,
McGRAW MORRIS P.C., by G. GUS MORRIS, and in response to Plaintiff's Complaint, states
as follows:

1. Answering corresponding paragraph hereto, this Defendant does not contest that Plaintiff is making a claim for damages pursuant to 42 U.S.C. §1983.
2. Answering corresponding paragraph hereto, this Defendant does not dispute the jurisdiction of this court.
3. Answering corresponding paragraph hereto, this Defendant concurs that venue for this matter lies in the Western District of Michigan.
4. Answering corresponding paragraph hereto, this Defendant is without sufficient information or knowledge to form a belief as to the truth of the allegations stated therein.
5. Answering corresponding paragraph hereto, Defendant, City of Holland, has provided sufficient information and knowledge to form a belief as to the residency of Co-Defendant, Carl Gabrielse; however, the remaining allegations that Mr. Gabrielse was an employee of the City of Holland is denied for the reason that it is untrue as Mr. Gabrielse, upon information and belief, was an employee of the law firm of Cunningham Dalman.
6. Answering corresponding paragraph hereto, this Defendant denies that Mr. Gabrielse was acting within the scope of his employment for the reason that the alleged actions were outside any authority that he was given, and further answering said paragraph this Defendant denies that he was acting under color of law at the time of the events alleged in this Complaint.
7. Answering corresponding paragraph hereto, Defendant, City of Holland, denies that it employed Mr. Gabrielse at any time as he was employed by the law firm of Cunningham Dalman. Further answering said paragraph, Defendant, City of Holland, denies the legal conclusion that it is liable for his acts, there is no respondeat superior liability under 42

U.S.C. § 1983. Further answering said paragraph, Defendant, City of Holland, denies that it had a policy, practice or custom which caused Plaintiff to suffer a constitutional deprivation.

8. Answering corresponding paragraph hereto, this Defendant does not contest the jurisdiction of this court.

FACTUAL BACKGROUND

9. Defendant hereby incorporates by reference his responses contained in Paragraphs 1 through 8 inclusive, as if fully set forth herein.
10. Answering corresponding paragraph hereto, this Defendant is without sufficient information or knowledge to form a belief as to the truth of the allegations stated therein.
11. Answering corresponding paragraph hereto, this Defendant is without sufficient information or knowledge to form a belief as to the truth of the allegations stated therein.
12. Answering corresponding paragraph hereto, this Defendant is without sufficient information or knowledge to form a belief as to the truth of the allegations stated therein.
13. Answering corresponding paragraph hereto, this Defendant is without sufficient information or knowledge to form a belief as to the truth of the allegations stated therein.
14. Answering corresponding paragraph hereto, this Defendant is without sufficient information or knowledge to form a belief as to the truth of the allegations stated therein.
15. Answering corresponding paragraph hereto, this Defendant is without sufficient information or knowledge to form a belief as to the truth of the allegations stated therein.
16. Answering corresponding paragraph hereto, this Defendant is without sufficient information or knowledge to form a belief as to the truth of the allegations stated therein.

17. Answering corresponding paragraph hereto, this Defendant is without sufficient information or knowledge to form a belief as to the truth of the allegations stated therein.
18. Answering corresponding paragraph hereto, this Defendant is without sufficient information or knowledge to form a belief as to the truth of the factual allegations contained therein; however, with regard to the legal conclusion contained therein that Mr. Gabrielse was acting in his official capacity as the City Prosecutor, this Defendant denies those allegations for the reason that they are untrue.
19. Answering corresponding paragraph hereto, this Defendant is without sufficient information or knowledge to form a belief as to the truth of the allegations stated therein.
20. Answering corresponding paragraph hereto, this Defendant is without sufficient information or knowledge to form a belief as to the truth of the allegations stated therein.
21. Answering corresponding paragraph hereto, this Defendant is without sufficient information or knowledge to form a belief as to the truth of the allegations stated therein.
22. Answering the corresponding paragraph hereto, this Defendant admits the allegations contained therein.
23. Answering the corresponding paragraph hereto, this Defendant admits the allegations contained therein.
24. Answering the corresponding paragraph hereto, this Defendant admits the allegations contained therein.

COUNT I
VIOLATION OF 42 U.S.C. § 1983 (CARL GABRIELSE)

25. Defendant hereby incorporates by reference his responses contained in Paragraphs 1 through 24 inclusive, as if fully set forth herein.

26. Answering the corresponding paragraph hereto, this Defendant need not respond to the allegations as they do not pertain to this Defendant. Further answering said paragraph, Defendant need not respond to the legal conclusions stated therein.
27. Answering the corresponding paragraph hereto, this Defendant need not respond to the allegations as they do not pertain to this Defendant. Further answering said paragraph, Defendant denies the remaining allegations.
28. Answering the corresponding paragraph hereto, this Defendant need not respond to the allegations as they do not pertain to this Defendant. Further answering said paragraph, this Defendant is without sufficient information or knowledge to form a belief as to the truth of the remaining allegations.
29. Answering the corresponding paragraph hereto, this Defendant need not respond to the allegations as they do not pertain to this Defendant. Further answering said paragraph, Defendant denies that Mr. Gabrielse was acting under color of law based on the allegations in the Complaint.
30. Answering the corresponding paragraph hereto, this Defendant need not respond to the allegations as they do not pertain to this Defendant. Further answering said paragraph, Defendant is without sufficient information or knowledge to form a belief as to the truth of the remaining allegations.
31. Answering the corresponding paragraph hereto, this Defendant need not respond to the allegations as they do not pertain to this Defendant. Further answering said paragraph, Defendant is without sufficient information or knowledge to form a belief as to the truth of the remaining allegations.

32. Answering the corresponding paragraph hereto, this Defendant need not respond to the allegations as they do not pertain to this Defendant. Further answering said paragraph, Defendant states that the protections provided by the Eight Amendment to the United States Constitution do not apply to the facts as pled in Plaintiff's Complaint for the reason that she was not convicted of any crime at the time that the allegations occurred.
33. Answering the corresponding paragraph hereto, this Defendant need not respond to the allegations as they do not pertain to this Defendant. Further answering said paragraph, Defendant states that the protections provided by the Eight Amendment to the United States Constitution do not apply to the facts as pled in Plaintiff's Complaint for the reason that she was not convicted of any crime at the time that the allegations occurred.
34. Answering the corresponding paragraph hereto, this Defendant need not respond to the allegations as they do not pertain to this Defendant. Further answering said paragraph, Defendant is without sufficient information or knowledge to form a belief as to the truth of the remaining allegations.

WHEREFORE, Defendant, CITY OF HOLLAND, respectfully requests this Honorable Court to enter an Order of no cause as to this Defendant, together with costs and attorney fees so wrongfully sustained.

COUNT II
VIOLATION OF 42 U.S.C. § 1983 (CITY OF HOLLAND)

35. Defendant hereby incorporates by reference his responses contained in Paragraphs 1 through 34 inclusive, as if fully set forth herein.
36. Answering the corresponding paragraph hereto, this Defendant denies each and every allegation contained therein for the reason that they are untrue.

37. Answering the corresponding paragraph hereto, this Defendant denies each and every allegation contained therein for the reason that they are untrue.

38. Answering the corresponding paragraph hereto, this Defendant denies each and every allegation contained therein for the reason that they are untrue.

39. Answering the corresponding paragraph hereto, this Defendant denies each and every allegation contained therein for the reason that they are untrue.

40. Answering the corresponding paragraph hereto, this Defendant denies each and every allegation contained therein for the reason that they are untrue.

41. Answering the corresponding paragraph hereto, this Defendant denies each and every allegation contained therein for the reason that they are untrue.

42. Answering the corresponding paragraph hereto, this Defendant denies each and every allegation contained therein for the reason that they are untrue.

WHEREFORE, Defendant, CITY OF HOLLAND, respectfully requests this Honorable Court to enter an Order of no cause as to this Defendant, together with costs and attorney fees so wrongfully sustained.

COUNT III
ASSAULT AND BATTERY (CARL GABRIELSE)

43. Defendant hereby incorporates by reference his responses contained in Paragraphs 1 through 42 inclusive, as if fully set forth herein.

44. Answering the corresponding paragraph hereto, this Defendant is without sufficient information or knowledge to form a belief as to the truth of the allegations stated therein.

45. Answering the corresponding paragraph hereto, this Defendant need not respond to the allegations as they do not pertain to this Defendant. Further answering said paragraph,

Defendant is without sufficient information or knowledge to form a belief as to the truth of the remaining allegations.

46. Answering the corresponding paragraph hereto, this Defendant need not respond to the allegations as they do not pertain to this Defendant. Further answering said paragraph, Defendant is without sufficient information or knowledge to form a belief as to the truth of the remaining allegations.

47. Answering the corresponding paragraph hereto, this Defendant need not respond to the allegations as they do not pertain to this Defendant. Further answering said paragraph, Defendant is without sufficient information or knowledge to form a belief as to the truth of the remaining allegations.

48. Answering the corresponding paragraph hereto, this Defendant need not respond to the allegations as they do not pertain to this Defendant. Further answering said paragraph, Defendant is without sufficient information or knowledge to form a belief as to the truth of the remaining allegations.

49. Answering the corresponding paragraph hereto, this Defendant need not respond to the allegations as they do not pertain to this Defendant. Further answering said paragraph, Defendant is without sufficient information or knowledge to form a belief as to the truth of the remaining allegations.

50. Answering the corresponding paragraph hereto, this Defendant need not respond to the allegations as they do not pertain to this Defendant. Further answering said paragraph, Defendant is without sufficient information or knowledge to form a belief as to the truth of the remaining allegations.

WHEREFORE, Defendant, CITY OF HOLLAND, respectfully requests this Honorable Court to enter an Order of no cause as to this Defendant, together with costs and attorney fees so wrongfully sustained.

COUNT IV
FALSE IMPRISONMENT (CARL GABRIELSE)

51. Defendant hereby incorporates by reference his responses contained in Paragraphs 1 through 50 inclusive, as if fully set forth herein.
52. Answering the corresponding paragraph hereto, this Defendant is without sufficient information or knowledge to form a belief as to the truth of the allegations stated therein.
53. Answering the corresponding paragraph hereto, this Defendant need not respond to the allegations as they do not pertain to this Defendant. Further answering said paragraph, Defendant is without sufficient information or knowledge to form a belief as to the truth of the remaining allegations.
54. Answering the corresponding paragraph hereto, this Defendant need not respond to the allegations as they do not pertain to this Defendant. Further answering said paragraph, Defendant is without sufficient information or knowledge to form a belief as to the truth of the remaining allegations.
55. Answering the corresponding paragraph hereto, this Defendant need not respond to the allegations as they do not pertain to this Defendant. Further answering said paragraph, Defendant is without sufficient information or knowledge to form a belief as to the truth of the remaining allegations.
56. Answering the corresponding paragraph hereto, this Defendant need not respond to the allegations as they do not pertain to this Defendant. Further answering said paragraph,

Defendant is without sufficient information or knowledge to form a belief as to the truth of the remaining allegations.

57. Answering the corresponding paragraph hereto, this Defendant need not respond to the allegations as they do not pertain to this Defendant. Further answering said paragraph, Defendant is without sufficient information or knowledge to form a belief as to the truth of the remaining allegations.

58. Answering the corresponding paragraph hereto, this Defendant need not respond to the allegations as they do not pertain to this Defendant. Further answering said paragraph, Defendant is without sufficient information or knowledge to form a belief as to the truth of the remaining allegations.

59. Answering the corresponding paragraph hereto, this Defendant need not respond to the allegations as they do not pertain to this Defendant. Further answering said paragraph, Defendant is without sufficient information or knowledge to form a belief as to the truth of the remaining allegations.

60. Answering the corresponding paragraph hereto, this Defendant need not respond to the allegations as they do not pertain to this Defendant. Further answering said paragraph, Defendant is without sufficient information or knowledge to form a belief as to the truth of the remaining allegations.

WHEREFORE, Defendant, CITY OF HOLLAND, respectfully requests this Honorable Court to enter an Order of no cause as to this Defendant, together with costs and attorney fees so wrongfully sustained.

COUNT V
FALSE IMPRISONMENT (CARL GABRIELSE)

61. Defendant hereby incorporates by reference his responses contained in Paragraphs 1 through 60 inclusive, as if fully set forth herein.
62. Answering the corresponding paragraph hereto, this Defendant need not respond to the allegations as they do not pertain to this Defendant. Further answering said paragraph, Defendant is without sufficient information or knowledge to form a belief as to the truth of the remaining allegations.
63. Answering the corresponding paragraph hereto, this Defendant need not respond to the allegations as they do not pertain to this Defendant. Further answering said paragraph, Defendant is without sufficient information or knowledge to form a belief as to the truth of the remaining allegations.
64. Answering the corresponding paragraph hereto, this Defendant need not respond to the allegations as they do not pertain to this Defendant. Further answering said paragraph, Defendant is without sufficient information or knowledge to form a belief as to the truth of the remaining allegations.
65. Answering the corresponding paragraph hereto, this Defendant need not respond to the allegations as they do not pertain to this Defendant. Further answering said paragraph, Defendant is without sufficient information or knowledge to form a belief as to the truth of the remaining allegations.
66. Answering the corresponding paragraph hereto, this Defendant need not respond to the allegations as they do not pertain to this Defendant. Further answering said paragraph,

Defendant is without sufficient information or knowledge to form a belief as to the truth of the remaining allegations.

67. Answering the corresponding paragraph hereto, this Defendant need not respond to the allegations as they do not pertain to this Defendant. Further answering said paragraph, Defendant is without sufficient information or knowledge to form a belief as to the truth of the remaining allegations. .

WHEREFORE, Defendant, CITY OF HOLLAND, respectfully requests this Honorable Court to enter an Order of no cause as to this Defendant, together with costs and attorney fees so wrongfully sustained.

Respectfully submitted,

McGRAW MORRIS P.C.

BY: s/ G. GUS MORRIS
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2075 West Big Beaver Road, Ste. 750
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RELIANCE ON JURY DEMAND

Defendant, CITY OF HOLLAND, hereby states his reliance upon the demand for jury trial previously filed by Plaintiff, as to all issues of trial.

Respectfully submitted,

McGRAW MORRIS P.C.

BY: s/ G. GUS MORRIS

G. GUS MORRIS (P32960)

Attorney for Defendant, City of Holland

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jas@smietankalaw.com

AFFIRMATIVE DEFENSES

NOW COMES the Defendant, CITY OF HOLLAND, by and through its attorneys,
McGRAW MORRIS P.C., by G. GUS MORRIS, and affirmatively aver as follows:

1. That the Defendant governmental unit is not liable for exemplary or punitive damages.
2. That any injury suffered by Plaintiff was not due and was not proximately caused by any action taken or any policy, procedure or custom of the City of Holland.
3. That Defendant City had no notice or knowledge of any of the alleged actions or activities as stated by Co-Defendant Gabrielse in the Complaint.
4. That Defendant is protected by governmental immunity pursuant to *Ross v Consumers Power*, 420 Mich 567 (1984); and *Odom v Wayne County, et al*, 480 Mich 1184; 747 NW2d 249 (2008), Docket #133433.
5. Plaintiff has failed to join every claim that she has against Defendant.
6. That Plaintiff's Complaint fails to state a cause of action upon which relief can be granted.
7. That the trier of fact should assess fault against a non-party pursuant to MCLA 600.6304.
8. That based upon the allegations in the Complaint, the Co-Defendant, Carl Gabrielse, was not acting under color of law and his actions did not constitute state action, and therefore the Plaintiff is not entitled to recovery under 42 U.S.C. § 1983.
9. That this Defendant reserves the right to assert and file any affirmative and/or special defenses that may become known through discovery or otherwise.

WHEREFORE, Defendant, CITY OF HOLLAND, respectfully request this Honorable Court to enter an Order of no cause of action as to these Defendants, together with costs and attorney fees so wrongfully sustained.

Respectfully submitted,

McGRAW MORRIS P.C.

BY: s/ G. GUS MORRIS

G. GUS MORRIS (P32960)

Attorney for Defendant, City of Holland

2075 West Big Beaver Road, Ste. 750

Troy, MI 48084

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CERTIFICATE OF SERVICE

I hereby certify that on October 14, 2010, I electronically filed the attached ANSWER TO COMPLAINT, RELIANCE ON JURY DEMAND and AFFIRMATIVE DEFENSES on

behalf of Defendant, CITY OF HOLLAND, and a copy of same was served upon counsel of record; namely, JOEL W. BAAR, ESQ., Grandville State Bank Building, 3996 Chicago Drive SW, Grandville, Michigan, 49418; and JOHN A. SMITANKA, ESQ., 4250 Chicago Drive SW, Suite B, Grandville, Michigan, 49418, via the United States District Court ECF System on the aforementioned date.

McGRAW MORRIS P.C.

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